DEPARTMENT OF STATE REVENUE

01-20200250.MOD

Memorandum of Decision: 01-20200250
Individual Income Tax
For the Tax Year 2019

NOTICE: IC § 4-22-7-7 permits the publication of this document in the Indiana Register. The publication of this document provides the general public with information about the Indiana Department of Revenue's official position concerning a specific set of facts and issues. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Memorandum of Decision.

HOLDING

Out-of-State Individual provided sufficient documentation permitting him to "net" his "per-session" gambling losses and gambling winnings on a "per-session" basis. Therefore, the Department will conduct a supplemental audit to verify the amount permitted under this method.

ISSUE

I. Individual Income Tax - Casual Gambler.

Authority: IC § 6-3-1-3.5; IC § 6-3-2-1; IC § 6-3-2-2; IC § 6-8.1-5-1; I.R.C. § 62; I.R.C. § 165; *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480 (Ind. Tax Ct. 2012); *Scopelite v. Indiana Dep't of Local Gov't Fin.,* 939 N.E.2d 1138 (Ind. Tax Ct. 2010); I.R.S. Adv. Mem. 2008-011 (December 12, 2008).

Taxpayer protests the denial of his refund claim.

STATEMENT OF FACTS

Taxpayer is an individual resident of another state who visited an Indiana casino in 2019. Taxpayer filed a claim for refund, claiming that as a casual gambler, he was entitled to use the "per-session" method outlined by the Internal Revenue Service ("IRS") to offset his Indiana income in the form of gambling winning with his gambling losses. The Indiana Department of Revenue ("Department"), denied Taxpayer's refund claim in full and determined he is not entitled to utilize the "net session method" of reporting income. Taxpayer protested the refund denial. The Department held an administrative hearing and this Memorandum of Decision results. Additional facts will be provided as necessary.

I. Individual Income Tax - Casual Gambler.

DISCUSSION

During 2019, Taxpayer visited a casino in Indiana, and recreationally played slot machines. Taxpayer had some wagering gains and some wagering losses. Taxpayer recorded his wagering gains and/or losses on a "per-session" method, which included the amount of money designated to play and the amount of money remaining after the visit. Pursuant to Indiana tax withholding requirements the Indiana casino withheld income tax on Taxpayer's qualifying wagering gains (removed the comma) and issued W-2G forms.

The Department notes that, "[W]hen [courts] examine a statute that an agency is 'charged with enforcing. . .[courts] defer to the agency's reasonable interpretation of [the] statute even over an equally reasonable interpretation by another party.'" *Dept. of State Revenue v. Caterpillar, Inc.,* 15 N.E.3d 579, 583 (Ind. 2014). Thus, all interpretations of Indiana tax law contained within this decision, as well as the preceding audit, shall be entitled to deference. Poorly developed and non-cogent arguments are subject to waiver. *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138, 1145 (Ind. Tax Ct. 2010); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480, 486 n.9 (Ind. Tax Ct. 2012).

Indiana imposes a tax "upon the adjusted gross income of every resident person, and on that part of the adjusted gross income derived from sources within Indiana of every nonresident person." IC § 6-3-2-1(a). IC § 6-3-2-2(a) specifically outlines what is income derived from Indiana sources and subject to Indiana income tax. For Indiana income tax purposes, the presumption is that taxpayers file their federal income tax returns as required pursuant to the Internal Revenue Code. In computing what is considered a taxpayer's Indiana income tax, IC § 6-3-1-3.5(a)

refers to the Internal Revenue Code. IC § 6-3-1-3.5(a) states that - with certain modifications specific to Indiana law - I.R.C. § 62 defines "adjusted gross income" for Indiana taxpayers.

I.R.C. § 165(d) provides the following:

> Losses from wagering transactions shall be allowed only to the extent of the gains from such transactions. For purposes of the preceding sentence, in the case of taxable years beginning after December 31, 2017, and before January 1, 2026, the term "losses from wagering transactions" includes any deduction otherwise allowable under this chapter incurred in carrying on any wagering transaction.

The IRS AM 2008-011, in relevant part, explains:

> A key question in interpreting [I.R.C.] § 165(d) is the significance of the term "transactions." The statute refers to gains and losses in terms of wagering transactions. Some would contend that transaction means every single play in a game of chance or every wager made. Under that reading, a taxpayer would have to calculate the gain or loss on every transaction separately and treat every play or wager as a taxable event. The gambler would also have to trace and recompute the basis through all transactions to calculate the result of each play or wager. Courts considering that reading have found it unduly burdensome and unreasonable. Moreover, the statute uses the plural term "transactions" implying that gain or loss may be calculated over a series of separate plays or wagers.
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> The better view is that a casual gambler, such as the taxpayer who plays the slot machines, recognizes a wagering gain or loss at the time she redeems her tokens. We think that the fluctuating wins and losses left in play are not accessions to wealth until the taxpayer redeems her tokens and can definitively calculate the amount above or below basis (the wager) realized. For example, a casual gambler who enters a casino with $100 and redeems his or her tokens for $300 after playing the slot machines has a wagering gain of $200 ($300 - $100). This is true even though the taxpayer may have had $1,000 in winning spins and $700 in losing spins during the course of play. Likewise, a casual gambler who enters a casino with $100 and loses the entire amount after playing the slot machines has a wagering loss of $100, even though the casual gambler may have had winning spins of $1,000 and losing spins of $1,100 during the course of play.
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> Calculating the Taxpayer's Gains and Losses
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> Under the facts presented, the taxpayer purchased and subsequently lost $100 worth of tokens on five separate occasions. As a result, the taxpayer sustained $500 of wagering losses ($100 x 5). The taxpayer also sustained losses on two other occasions, when the taxpayer redeemed tokens in an amount less than the $100 (basis) of tokens originally purchased. The loss is the basis of the bet ($100 in tokens) minus the amount of the tokens eventually redeemed. Therefore, on the day the taxpayer redeemed $20 worth of tokens, the taxpayer incurred an $80 wagering loss ($100-$20). On the day the taxpayer redeemed $70 worth of tokens, the taxpayer incurred a $30 wagering loss ($100-$70).
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> On three occasions, the taxpayer redeemed tokens in an amount greater than the $100 of tokens originally purchased. The amount redeemed less the $100 basis of the wager constitutes a wagering gain. On the day the taxpayer redeemed $150 worth of tokens, the taxpayer had a $50 wagering gain ($150-$100). On the day the taxpayer redeemed $200 worth of tokens, the taxpayer had a $100 wagering gain ($200-$100). And on the day the taxpayer redeemed $300 worth of tokens, the taxpayer had a $200 wagering gain ($300-$100).For the year, the taxpayer had total wagering gains of $350 ($50 + $100 + $200) and total wagering losses of $610, ($500 from losing the entire basis of $100 on five occasions + $80 and $30 from two other occasions). The taxpayer's wagering losses exceeded her wagering gains for the taxable year by $260 ($610 - $350). The taxpayer must report the $350 of wagering gains as gross income under § 61. However, under § 165(d), the taxpayer may deduct only $350 of the $610 wagering losses. The taxpayer may not carry over the excess wagering losses to offset wagering gains in another taxable year or offset non-wagering income.
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> A casual gambler who elects to itemize deductions may deduct wagering losses, up to wagering gains, on Form 1040, Schedule A. In this case, the taxpayer may deduct only $350 of her $610 of wagering losses as an itemized deduction. A casual gambler who takes the standard deduction rather than electing to itemize may not deduct any wagering losses.

(Internal citations omitted).

Taxpayer submitted documentation, including copies of the W-2Gs issued by the casino, a verifiable statement from the casino, and a copy of the personal log for 2019. Thus, Taxpayer claimed that he was entitled to a refund of the taxes withheld from his wagering gains pursuant to the "per-session" method outlined in IRS AM 2008-2011.

Upon review, the Department agrees that Taxpayer was permitted to report the wagering gains and losses on a "per-session" basis pursuant to IC § 6-3-1-3.5(a), I.R.C. § 165(d), and IRS AM 2008-2011. Taxpayer provided sufficient documentation to support his protest. The Department will therefore conduct a supplemental audit to verify the amount of refund via review of Taxpayer's log, W-2Gs, and the casino win/loss statement.

FINDING

Taxpayer's protest is sustained conditioned on the Department's further review of Taxpayer's supporting documents - the casino statements, Taxpayer's 2019 log, and W-2Gs - to verify the actual amount of withholding credits claimed.

July 21, 2020

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An html version of this document.